

SB0472



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB0472

Introduced 2/23/2021, by Sen. Scott M. Bennett

SYNOPSIS AS INTRODUCED:

35 ILCS 10/5-5
35 ILCS 10/5-15
35 ILCS 10/5-20

Amends the Economic Development for a Growing Economy Tax Credit Act. Provides that certain startup taxpayers are eligible to elect to claim the Credit against their obligation to pay over withholding taxes. Makes changes to the definition of "underserved area" to change certain references from the federal decennial census to the American Community Survey.

LRB102 14725 HLH 20078 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Economic Development for a Growing Economy
5 Tax Credit Act is amended by changing Sections 5-5, 5-15, and
6 5-20 as follows:

7 (35 ILCS 10/5-5)

8 Sec. 5-5. Definitions. As used in this Act:

9 "Agreement" means the Agreement between a Taxpayer and the
10 Department under the provisions of Section 5-50 of this Act.

11 "Applicant" means a Taxpayer that is operating a business
12 located or that the Taxpayer plans to locate within the State
13 of Illinois and that is engaged in interstate or intrastate
14 commerce for the purpose of manufacturing, processing,
15 assembling, warehousing, or distributing products, conducting
16 research and development, providing tourism services, or
17 providing services in interstate commerce, office industries,
18 or agricultural processing, but excluding retail, retail food,
19 health, or professional services. "Applicant" does not include
20 a Taxpayer who closes or substantially reduces an operation at
21 one location in the State and relocates substantially the same
22 operation to another location in the State. This does not
23 prohibit a Taxpayer from expanding its operations at another

1 location in the State, provided that existing operations of a
2 similar nature located within the State are not closed or
3 substantially reduced. This also does not prohibit a Taxpayer
4 from moving its operations from one location in the State to
5 another location in the State for the purpose of expanding the
6 operation provided that the Department determines that
7 expansion cannot reasonably be accommodated within the
8 municipality in which the business is located, or in the case
9 of a business located in an incorporated area of the county,
10 within the county in which the business is located, after
11 conferring with the chief elected official of the municipality
12 or county and taking into consideration any evidence offered
13 by the municipality or county regarding the ability to
14 accommodate expansion within the municipality or county.

15 "Committee" means the Illinois Business Investment
16 Committee created under Section 5-25 of this Act within the
17 Illinois Economic Development Board.

18 "Credit" means the amount agreed to between the Department
19 and Applicant under this Act, but not to exceed the lesser of:
20 (1) the sum of (i) 50% of the Incremental Income Tax
21 attributable to New Employees at the Applicant's project and
22 (ii) 10% of the training costs of New Employees; or (2) 100% of
23 the Incremental Income Tax attributable to New Employees at
24 the Applicant's project. However, if the project is located in
25 an underserved area, then the amount of the Credit may not
26 exceed the lesser of: (1) the sum of (i) 75% of the Incremental

1 Income Tax attributable to New Employees at the Applicant's
2 project and (ii) 10% of the training costs of New Employees; or
3 (2) 100% of the Incremental Income Tax attributable to New
4 Employees at the Applicant's project. If an Applicant agrees
5 to hire the required number of New Employees, then the maximum
6 amount of the Credit for that Applicant may be increased by an
7 amount not to exceed 25% of the Incremental Income Tax
8 attributable to retained employees at the Applicant's project;
9 provided that, in order to receive the increase for retained
10 employees, the Applicant must provide the additional evidence
11 required under paragraph (3) of subsection (b) of Section
12 5-25.

13 "Department" means the Department of Commerce and Economic
14 Opportunity.

15 "Director" means the Director of Commerce and Economic
16 Opportunity.

17 "Full-time Employee" means an individual who is employed
18 for consideration for at least 35 hours each week or who
19 renders any other standard of service generally accepted by
20 industry custom or practice as full-time employment. An
21 individual for whom a W-2 is issued by a Professional Employer
22 Organization (PEO) is a full-time employee if employed in the
23 service of the Applicant for consideration for at least 35
24 hours each week or who renders any other standard of service
25 generally accepted by industry custom or practice as full-time
26 employment to Applicant.

1 "Incremental Income Tax" means the total amount withheld
2 during the taxable year from the compensation of New Employees
3 and, if applicable, retained employees under Article 7 of the
4 Illinois Income Tax Act arising from employment at a project
5 that is the subject of an Agreement.

6 "New Construction EDGE Agreement" means the Agreement
7 between a Taxpayer and the Department under the provisions of
8 Section 5-51 of this Act.

9 "New Construction EDGE Credit" means an amount agreed to
10 between the Department and the Applicant under this Act as
11 part of a New Construction EDGE Agreement that does not exceed
12 50% of the Incremental Income Tax attributable to New
13 Construction EDGE Employees at the Applicant's project;
14 however, if the New Construction EDGE Project is located in an
15 underserved area, then the amount of the New Construction EDGE
16 Credit may not exceed 75% of the Incremental Income Tax
17 attributable to New Construction EDGE Employees at the
18 Applicant's New Construction EDGE Project.

19 "New Construction EDGE Employee" means a laborer or worker
20 who is employed by an Illinois contractor or subcontractor in
21 the actual construction work on the site of a New Construction
22 EDGE Project, pursuant to a New Construction EDGE Agreement.

23 "New Construction EDGE Incremental Income Tax" means the
24 total amount withheld during the taxable year from the
25 compensation of New Construction EDGE Employees.

26 "New Construction EDGE Project" means the building of a

1 Taxpayer's structure or building, or making improvements of
2 any kind to real property. "New Construction EDGE Project"
3 does not include the routine operation, routine repair, or
4 routine maintenance of existing structures, buildings, or real
5 property.

6 "New Employee" means:

7 (a) A Full-time Employee first employed by a Taxpayer
8 in the project that is the subject of an Agreement and who
9 is hired after the Taxpayer enters into the tax credit
10 Agreement.

11 (b) The term "New Employee" does not include:

12 (1) an employee of the Taxpayer who performs a job
13 that was previously performed by another employee, if
14 that job existed for at least 6 months before hiring
15 the employee;

16 (2) an employee of the Taxpayer who was previously
17 employed in Illinois by a Related Member of the
18 Taxpayer and whose employment was shifted to the
19 Taxpayer after the Taxpayer entered into the tax
20 credit Agreement; or

21 (3) a child, grandchild, parent, or spouse, other
22 than a spouse who is legally separated from the
23 individual, of any individual who has a direct or an
24 indirect ownership interest of at least 5% in the
25 profits, capital, or value of the Taxpayer.

26 (c) Notwithstanding paragraph (1) of subsection (b),

1 an employee may be considered a New Employee under the
2 Agreement if the employee performs a job that was
3 previously performed by an employee who was:

4 (1) treated under the Agreement as a New Employee;
5 and

6 (2) promoted by the Taxpayer to another job.

7 (d) Notwithstanding subsection (a), the Department may
8 award Credit to an Applicant with respect to an employee
9 hired prior to the date of the Agreement if:

10 (1) the Applicant is in receipt of a letter from
11 the Department stating an intent to enter into a
12 credit Agreement;

13 (2) the letter described in paragraph (1) is
14 issued by the Department not later than 15 days after
15 the effective date of this Act; and

16 (3) the employee was hired after the date the
17 letter described in paragraph (1) was issued.

18 "Noncompliance Date" means, in the case of a Taxpayer that
19 is not complying with the requirements of the Agreement or the
20 provisions of this Act, the day following the last date upon
21 which the Taxpayer was in compliance with the requirements of
22 the Agreement and the provisions of this Act, as determined by
23 the Director, pursuant to Section 5-65.

24 "Pass Through Entity" means an entity that is exempt from
25 the tax under subsection (b) or (c) of Section 205 of the
26 Illinois Income Tax Act.

1 "Professional Employer Organization" (PEO) means an
2 employee leasing company, as defined in Section 206.1(A)(2) of
3 the Illinois Unemployment Insurance Act.

4 "Related Member" means a person that, with respect to the
5 Taxpayer during any portion of the taxable year, is any one of
6 the following:

7 (1) An individual stockholder, if the stockholder and
8 the members of the stockholder's family (as defined in
9 Section 318 of the Internal Revenue Code) own directly,
10 indirectly, beneficially, or constructively, in the
11 aggregate, at least 50% of the value of the Taxpayer's
12 outstanding stock.

13 (2) A partnership, estate, or trust and any partner or
14 beneficiary, if the partnership, estate, or trust, and its
15 partners or beneficiaries own directly, indirectly,
16 beneficially, or constructively, in the aggregate, at
17 least 50% of the profits, capital, stock, or value of the
18 Taxpayer.

19 (3) A corporation, and any party related to the
20 corporation in a manner that would require an attribution
21 of stock from the corporation to the party or from the
22 party to the corporation under the attribution rules of
23 Section 318 of the Internal Revenue Code, if the Taxpayer
24 owns directly, indirectly, beneficially, or constructively
25 at least 50% of the value of the corporation's outstanding
26 stock.

1 (4) A corporation and any party related to that
2 corporation in a manner that would require an attribution
3 of stock from the corporation to the party or from the
4 party to the corporation under the attribution rules of
5 Section 318 of the Internal Revenue Code, if the
6 corporation and all such related parties own in the
7 aggregate at least 50% of the profits, capital, stock, or
8 value of the Taxpayer.

9 (5) A person to or from whom there is attribution of
10 stock ownership in accordance with Section 1563(e) of the
11 Internal Revenue Code, except, for purposes of determining
12 whether a person is a Related Member under this paragraph,
13 20% shall be substituted for 5% wherever 5% appears in
14 Section 1563(e) of the Internal Revenue Code.

15 "Startup taxpayer" means a corporation, partnership, or
16 other entity incorporated no more than 5 years before the
17 filing of an application for an Agreement that has never had
18 any Illinois income tax liability, excluding any Illinois
19 income tax liability of a Related Member which shall not be
20 attributed to the startup taxpayer.

21 "Taxpayer" means an individual, corporation, partnership,
22 or other entity that has any Illinois Income Tax liability.

23 "Underserved area" means a geographic area that meets one
24 or more of the following conditions:

25 (1) the area has a poverty rate of at least 20%
26 according to the latest American Community Survey ~~federal~~

1 ~~decennial census;~~

2 (2) 35% or more of the families with children in the
3 area are living below 130% of the poverty line, according
4 to the latest American Community Survey ~~75% or more of the~~
5 ~~children in the area participate in the federal free lunch~~
6 ~~program according to reported statistics from the State~~
7 ~~Board of Education;~~

8 (3) at least 20% of the households in the area receive
9 assistance under the Supplemental Nutrition Assistance
10 Program (SNAP); or

11 (4) the area has an average unemployment rate, as
12 determined by the Illinois Department of Employment
13 Security, that is more than 120% of the national
14 unemployment average, as determined by the U.S. Department
15 of Labor, for a period of at least 2 consecutive calendar
16 years preceding the date of the application.

17 (Source: P.A. 100-511, eff. 9-18-17; 101-9, eff. 6-5-19.)

18 (35 ILCS 10/5-15)

19 Sec. 5-15. Tax Credit Awards. Subject to the conditions
20 set forth in this Act, a Taxpayer is entitled to a Credit
21 against or, as described in subsection (g) of this Section, a
22 payment towards taxes imposed pursuant to subsections (a) and
23 (b) of Section 201 of the Illinois Income Tax Act that may be
24 imposed on the Taxpayer for a taxable year beginning on or
25 after January 1, 1999, if the Taxpayer is awarded a Credit by

1 the Department under this Act for that taxable year.

2 (a) The Department shall make Credit awards under this Act
3 to foster job creation and retention in Illinois.

4 (b) A person that proposes a project to create new jobs in
5 Illinois must enter into an Agreement with the Department for
6 the Credit under this Act.

7 (c) The Credit shall be claimed for the taxable years
8 specified in the Agreement.

9 (d) The Credit shall not exceed the Incremental Income Tax
10 attributable to the project that is the subject of the
11 Agreement.

12 (e) Nothing herein shall prohibit a Tax Credit Award to an
13 Applicant that uses a PEO if all other award criteria are
14 satisfied.

15 (f) In lieu of the Credit allowed under this Act against
16 the taxes imposed pursuant to subsections (a) and (b) of
17 Section 201 of the Illinois Income Tax Act for any taxable year
18 ending on or after December 31, 2009, for Taxpayers that
19 entered into Agreements prior to January 1, 2015 and otherwise
20 meet the criteria set forth in this subsection (f), the
21 Taxpayer may elect to claim the Credit against its obligation
22 to pay over withholding under Section 704A of the Illinois
23 Income Tax Act.

24 (1) The election under this subsection (f) may be made
25 only by a Taxpayer that (i) is primarily engaged in one of
26 the following business activities: water purification and

1 treatment, motor vehicle metal stamping, automobile
2 manufacturing, automobile and light duty motor vehicle
3 manufacturing, motor vehicle manufacturing, light truck
4 and utility vehicle manufacturing, heavy duty truck
5 manufacturing, motor vehicle body manufacturing, cable
6 television infrastructure design or manufacturing, or
7 wireless telecommunication or computing terminal device
8 design or manufacturing for use on public networks and
9 (ii) meets the following criteria:

10 (A) the Taxpayer (i) had an Illinois net loss or an
11 Illinois net loss deduction under Section 207 of the
12 Illinois Income Tax Act for the taxable year in which
13 the Credit is awarded, (ii) employed a minimum of
14 1,000 full-time employees in this State during the
15 taxable year in which the Credit is awarded, (iii) has
16 an Agreement under this Act on December 14, 2009 (the
17 effective date of Public Act 96-834), and (iv) is in
18 compliance with all provisions of that Agreement;

19 (B) the Taxpayer (i) had an Illinois net loss or an
20 Illinois net loss deduction under Section 207 of the
21 Illinois Income Tax Act for the taxable year in which
22 the Credit is awarded, (ii) employed a minimum of
23 1,000 full-time employees in this State during the
24 taxable year in which the Credit is awarded, and (iii)
25 has applied for an Agreement within 365 days after
26 December 14, 2009 (the effective date of Public Act

1 96-834);

2 (C) the Taxpayer (i) had an Illinois net operating
3 loss carryforward under Section 207 of the Illinois
4 Income Tax Act in a taxable year ending during
5 calendar year 2008, (ii) has applied for an Agreement
6 within 150 days after the effective date of this
7 amendatory Act of the 96th General Assembly, (iii)
8 creates at least 400 new jobs in Illinois, (iv)
9 retains at least 2,000 jobs in Illinois that would
10 have been at risk of relocation out of Illinois over a
11 10-year period, and (v) makes a capital investment of
12 at least \$75,000,000;

13 (D) the Taxpayer (i) had an Illinois net operating
14 loss carryforward under Section 207 of the Illinois
15 Income Tax Act in a taxable year ending during
16 calendar year 2009, (ii) has applied for an Agreement
17 within 150 days after the effective date of this
18 amendatory Act of the 96th General Assembly, (iii)
19 creates at least 150 new jobs, (iv) retains at least
20 1,000 jobs in Illinois that would have been at risk of
21 relocation out of Illinois over a 10-year period, and
22 (v) makes a capital investment of at least
23 \$57,000,000; or

24 (E) the Taxpayer (i) employed at least 2,500
25 full-time employees in the State during the year in
26 which the Credit is awarded, (ii) commits to make at

1 least \$500,000,000 in combined capital improvements
2 and project costs under the Agreement, (iii) applies
3 for an Agreement between January 1, 2011 and June 30,
4 2011, (iv) executes an Agreement for the Credit during
5 calendar year 2011, and (v) was incorporated no more
6 than 5 years before the filing of an application for an
7 Agreement.

8 (1.5) The election under this subsection (f) may also
9 be made by a Taxpayer for any Credit awarded pursuant to an
10 agreement that was executed between January 1, 2011 and
11 June 30, 2011, if the Taxpayer (i) is primarily engaged in
12 the manufacture of inner tubes or tires, or both, from
13 natural and synthetic rubber, (ii) employs a minimum of
14 2,400 full-time employees in Illinois at the time of
15 application, (iii) creates at least 350 full-time jobs and
16 retains at least 250 full-time jobs in Illinois that would
17 have been at risk of being created or retained outside of
18 Illinois, and (iv) makes a capital investment of at least
19 \$200,000,000 at the project location.

20 (1.6) The election under this subsection (f) may also
21 be made by a Taxpayer for any Credit awarded pursuant to an
22 agreement that was executed within 150 days after the
23 effective date of this amendatory Act of the 97th General
24 Assembly, if the Taxpayer (i) is primarily engaged in the
25 operation of a discount department store, (ii) maintains
26 its corporate headquarters in Illinois, (iii) employs a

1 minimum of 4,250 full-time employees at its corporate
2 headquarters in Illinois at the time of application, (iv)
3 retains at least 4,250 full-time jobs in Illinois that
4 would have been at risk of being relocated outside of
5 Illinois, (v) had a minimum of \$40,000,000,000 in total
6 revenue in 2010, and (vi) makes a capital investment of at
7 least \$300,000,000 at the project location.

8 (1.7) Notwithstanding any other provision of law, the
9 election under this subsection (f) may also be made by a
10 Taxpayer for any Credit awarded pursuant to an agreement
11 that was executed or applied for on or after July 1, 2011
12 and on or before March 31, 2012, if the Taxpayer is
13 primarily engaged in the manufacture of original and
14 aftermarket filtration parts and products for automobiles,
15 motor vehicles, light duty motor vehicles, light trucks
16 and utility vehicles, and heavy duty trucks, (ii) employs
17 a minimum of 1,000 full-time employees in Illinois at the
18 time of application, (iii) creates at least 250 full-time
19 jobs in Illinois, (iv) relocates its corporate
20 headquarters to Illinois from another state, and (v) makes
21 a capital investment of at least \$4,000,000 at the project
22 location.

23 (1.8) Notwithstanding any other provision of law, the
24 election under this subsection (f) may also be made by a
25 startup taxpayer for any Credit awarded pursuant to an
26 Agreement that was executed or applied for on or after the

1 effective date of this amendatory Act of the 102nd General
2 Assembly, if the startup taxpayer, without considering any
3 Related Member or other investor, (i) has never had any
4 Illinois income tax liability and (ii) was incorporated no
5 more than 5 years before the filing of an application for
6 an Agreement. Any such election under this paragraph (1.8)
7 shall be effective unless and until such startup taxpayer
8 has any Illinois income tax liability. This election under
9 this paragraph (1.8) shall automatically terminate when
10 the startup taxpayer has any Illinois income tax liability
11 at the end of any taxable year during the term of the
12 Agreement. Thereafter, the startup taxpayer may receive a
13 Credit, taking into account any benefits previously
14 enjoyed or received by way of the election under this
15 paragraph (1.8), so long as the startup taxpayer remains
16 in compliance with the terms and conditions of the
17 Agreement.

18 (2) An election under this subsection shall allow the
19 credit to be taken against payments otherwise due under
20 Section 704A of the Illinois Income Tax Act during the
21 first calendar year beginning after the end of the taxable
22 year in which the credit is awarded under this Act.

23 (3) The election shall be made in the form and manner
24 required by the Illinois Department of Revenue and, once
25 made, shall be irrevocable.

26 (4) If a Taxpayer who meets the requirements of

1 subparagraph (A) of paragraph (1) of this subsection (f)
2 elects to claim the Credit against its withholdings as
3 provided in this subsection (f), then, on and after the
4 date of the election, the terms of the Agreement between
5 the Taxpayer and the Department may not be further amended
6 during the term of the Agreement.

7 (g) A pass-through entity that has been awarded a credit
8 under this Act, its shareholders, or its partners may treat
9 some or all of the credit awarded pursuant to this Act as a tax
10 payment for purposes of the Illinois Income Tax Act. The term
11 "tax payment" means a payment as described in Article 6 or
12 Article 8 of the Illinois Income Tax Act or a composite payment
13 made by a pass-through entity on behalf of any of its
14 shareholders or partners to satisfy such shareholders' or
15 partners' taxes imposed pursuant to subsections (a) and (b) of
16 Section 201 of the Illinois Income Tax Act. In no event shall
17 the amount of the award credited pursuant to this Act exceed
18 the Illinois income tax liability of the pass-through entity
19 or its shareholders or partners for the taxable year.

20 (Source: P.A. 100-511, eff. 9-18-17.)

21 (35 ILCS 10/5-20)

22 Sec. 5-20. Application for a project to create and retain
23 new jobs.

24 (a) Any Taxpayer proposing a project located or planned to
25 be located in Illinois may request consideration for

1 designation of its project, by formal written letter of
2 request or by formal application to the Department, in which
3 the Applicant states its intent to make at least a specified
4 level of investment and intends to hire or retain a specified
5 number of full-time employees at a designated location in
6 Illinois. As circumstances require, the Department may require
7 a formal application from an Applicant and a formal letter of
8 request for assistance.

9 (b) In order to qualify for Credits under this Act, an
10 Applicant's project must:

11 (1) if the Applicant has more than 100 employees,
12 involve an investment of at least \$2,500,000 in capital
13 improvements to be placed in service within the State as a
14 direct result of the project; if the Applicant has 100 or
15 fewer employees, then there is no capital investment
16 requirement;

17 (1.5) if the Applicant has more than 100 employees,
18 employ a number of new employees in the State equal to the
19 lesser of (A) 10% of the number of full-time employees
20 employed by the applicant world-wide on the date the
21 application is filed with the Department or (B) 50 New
22 Employees; and, if the Applicant has 100 or fewer
23 employees, employ a number of new employees in the State
24 equal to the lesser of (A) 5% of the number of full-time
25 employees employed by the applicant world-wide on the date
26 the application is filed with the Department or (B) 50 New

1 Employees;

2 (1.6) if the Applicant is a startup taxpayer, the
3 employees employed by Related Members shall not be
4 attributed to the Applicant for purposes of determining
5 the capital investment or job creation requirements under
6 this subsection (b);

7 (2) (blank);

8 (3) (blank); and

9 (4) include an annual sexual harassment policy report
10 as provided under Section 5-58.

11 (c) After receipt of an application, the Department may
12 enter into an Agreement with the Applicant if the application
13 is accepted in accordance with Section 5-25.

14 (Source: P.A. 100-511, eff. 9-18-17; 100-698, eff. 1-1-19;
15 101-81, eff. 7-12-19.)